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25 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

26 ESCO CORPORATION and ESCO CANADA,
LTD.,

27 Plaintiffs,

28 v.

CASHMAN EQUIPMENT COMPANY,
CATERPILLAR GLOBAL MINING LLC,
CATERPILLAR, INC., RAPTOR MINING
PRODUCTS (USA), INC. and RAPTOR
MINING PRODUCTS, INC.

Defendants.

Lead Case No.: 2:12-cv-01545-RCJ-CWH
Consolidated Cases: (2:12-cv-01545-RCJ-
CWH, 2:14-cv-529-RCJ-PAL)

JOINT STIPULATION AND ORDER:

- (1) FOR EXTENSION OF TIME TO
SUBMIT JOINT INTERIM STATUS
REPORT;**
- (2) FOR MAGISTRATE JUDGE
LEEN TO PRESIDE OVER THE POST-
CLAIM CONSTRUCTION
SETTLEMENT CONFERENCE; AND**
- (3) FOR EXTENSION OF TIME TO
CONDUCT POST-CLAIM
CONSTRUCTION SETTLEMENT
CONFERENCE**

(First Request)

1 Plaintiffs ESCO Corporation and ESCO Canada Ltd. (collectively “Plaintiffs”) and
2 Defendants Cashman Equipment Company, Caterpillar Global Mining LLC, Caterpillar, Inc.,
3 Raptor Mining Products, (USA), Inc. and Raptor Mining Products, Inc. (collectively
4 “Defendants,” and together with Plaintiffs, the “Parties”), through their undersigned counsel of
5 record, and pursuant to L.R. 6-1 and 7-1, hereby agree and stipulate to the Court’s entry of an
6 *Order* providing: (1) the Parties shall have until June 1, 2015 to submit their L.R. 26-3 Joint
7 Interim Status Report; (2) Magistrate Judge Peggy A. Leen, who has already presided over a
8 settlement conference involving all the claims at issue pursuant to L.R. 16.1-19(a), shall preside
9 over the Post-Claim Construction Settlement Conference pursuant to L.R. 16.1-19(b); and (3) the
10 Parties shall be granted until July 13, 2015 to conduct a Post-Claim Construction Settlement
11 Conference pursuant to L.R. 16.1-19(b). Good cause exists for all three requests, and it will
12 promote judicial economy for Judge Leen to preside over the Post-Claim Construction
13 Settlement Conference given her familiarity with the claims and issues involved in this
14 consolidated action.

17 **1. Joint Status Report**

18 Regarding the Joint Status Report, Local Rule 26-3 requires that, not later than sixty (60)
19 days before the discovery cut-off, the parties shall submit an interim status report stating “the
20 time they estimate will be required for trial, giving three (3) alternative available trial dates, and
21 stating whether, in the opinion of counsel who will try the case, trial will be eliminated or its
22 length affected by substantive motions.” The Parties previously agreed to submit a Report
23 fourteen days after entry of a claim construction Order, [Case No. 2:14-cv-529-RCJ-PAL, ECF
24 40], making the report due on May 26, 2015.

25 Counsel for all Parties spoke to the Clerk of Court on May 26, 2015, and informed the
26 Clerk that additional time was required to prepare the report. The Clerk indicated the submission
27

1 of the report on June 1, 2015 was acceptable, and the Parties now hereby move the Court for an
 2 extension of time to file to report until June 1, 2015, in accordance with these discussions with
 3 the Clerk of Court. There is also good cause for the stipulation for the extension.
 4

5 For example, it has been difficult for the Parties to assess various issues because the
 6 number and scope of claims and defenses is unsettled due to, *inter alia*, Plaintiffs' Motions to
 7 Dismiss, Strike, Sever and Stay [ECF Nos. 160, 164-66], and Plaintiffs' intention to seek limited
 8 reconsideration of the Court's Claim Construction Order [ECF No. 158]. Moreover, this
 9 extension is not requested for any improper purpose or delay. Finally, the Parties have not
 10 previously requested an extension regarding the interim status report.

11 **2. Presiding Judge for the Post-Claim Construction Settlement Conference**

12 Regarding the Post-Claim Construction Settlement Conference, the Parties request that
 13 Magistrate Judge Leen, who has already presided over a Pre-Claim Settlement Conference
 14 pursuant to L.R. 16.1-19(a), also preside over the Post-Claim Construction Settlement
 15 Conference pursuant to L.R. 16.1-19(b) given her familiarity with the claims and issues within
 16 the consolidated cases.

17 This case is a consolidation of two separate cases: (1) Case No. 2:12-cv-01545-RCJ-
 18 CWH ("the '1545 Case"); and (2) Case No. 2:14-cv-529-RCJ-PAL ("the '529 case"). The '1545
 19 Case was previously assigned to Magistrate Judge Koppe. On November 3, 2014, Magistrate
 20 Judge Koppe recused herself from the case, [ECF 106], and the Court reassigned the case to
 21 Magistrate Judge Hoffman. [ECF 107]. The '529 Case was originally assigned to Magistrate
 22 Judge Leen. [Case No. 2:14-cv-529-RCJ-PAL, ECF 7]. On December 30, 2014, the Court
 23 ordered consolidation of the '529 Case into the '1545 case. [ECF 118]. Accordingly, Magistrate
 24 Judge Hoffman is the current Magistrate Judge assigned to the present, consolidated action.
 25

26 However, on December 2, 2014, and prior to consolidation with the present lead case,
 27

1 Magistrate Judge Leen presided over a Pre-Claim Settlement Conference in the '529 Case
2 pursuant to L.R. 16.1-19(a). [Case No. 2:14-cv-529-RCJ-PAL, ECF 53]. Because the Parties had
3 not yet conducted a Pre-Claim Settlement Conference in the '1545 Case, the Parties agreed to
4 conduct the settlement conference as a global settlement conference in all pending actions and
5 did discuss settlement regarding both the '529 and '1545 Cases with Magistrate Judge Leen.
6 Given that Magistrate Judge Leen is already familiar with the claims and issues of the present
7 consolidated actions, it would promote judicial economy for her to preside over the next
8 settlement conference. Good cause therefore exists for this request and stipulation.

10 **3. Timing of the Post-Claim Construction Settlement Conference**

11 In addition, pursuant to L.R. 16.1-19(b), the Parties are to hold a Post-Claim Construction
12 Settlement Conference within thirty (30) days after entry of the Court's Claim Construction
13 Order [ECF No. 158], *i.e.* on or before June 11, 2015. The Parties do not know Judge Leen's
14 present availability for a settlement conference, but think it is most unlikely the Parties will be
15 able to prepare briefs and Judge Leen will be able to schedule and conduct a settlement
16 conference before June 11, 2015. Moreover, representatives from Plaintiffs, the Caterpillar
17 Defendants, and the Raptor Defendants need to travel from Oregon, Illinois, and Canada,
18 respectively, while Plaintiffs' lead counsel and the Caterpillar Defendants' lead counsel need to
19 travel from Illinois and Washington, DC, respectively, to attend the settlement conference. To
20 accommodate the schedules of Magistrate Leen, the Parties, and their counsel, the Parties agree
21 that the deadline to conduct the Post-Claim Construction Settlement Conference should be
22 extended from June 11, 2015 to **July 13, 2015**. Good cause exists for this request and
23 stipulation.

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Dated this 29th day of May, 2015.

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ORDER

IT IS SO ORDERED. The parties shall file their interim status report no later than **July 13, 2015**. The parties shall also contact Judge Peggy Leen's chambers to set a date and time for the settlement conference.

DATED: June 2, 2015

United States Magistrate Judge

CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that on May 29, 2015 a true and correct copy of the
3 foregoing **JOINT STIPULATION AND ORDER: (1) FOR EXTENSION OF TIME TO**
4 **SUBMIT JOINT INTERIM STATUS REPORT; (2) FOR MAGISTRATE JUDGE LEEN**
5 **TO PRESIDE OVER THE POST-CLAIM CONSTRUCTION SETTLEMENT**
6 **CONFERENCE; AND (3) FOR EXTENSION OF TIME TO CONDUCT POST-CLAIM**
7 **CONSTRUCTION SETTLEMENT CONFERENCE** will be served upon all counsel of record
8 who are registered participants via electronic mail through the United States District Court's
9 CM/ECF system.

12 || DATED: May 29, 2015

/s/ Jeff Tillison

Employee of Watson Rounds, P.C.